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To all members of the Law & Justice Committee:

I am writing to explain why I fully support House Bill 4766 (2017).

I live in Cottrellville Township – a municipality that is notoriously known across the entire state of Michigan for severe violations of the Open Meetings Act (OMA), and severe violations of other statutory laws and federal laws. In fact, Cottrellville Township has violated the rights of the people so severely, the violations have been written about on a national level in both USA Today and the Washington Post.

For over three decades, the Michigan Open Meetings Act was successfully enforced by the courts in a way that satisfied the Legislatures. The people who originally wrote the Open Meetings Act were obviously satisfied with the way the courts were enforcing the Open Meetings Act, because no attempt to amend those parts of the Open Meetings Act occurred.

For over three decades the courts successfully based legal decisions on legal precedents set at the Court of Appeals in 1981. This 1981 legal decision from the Court of Appeals was the published lawsuit of Ridenour vs Dearborn Board of Education. This particular court case set a legal precedent making it clear that a case can be won based on any type of "relief," including both "Declaratory" relief and "Injunctive" relief.

This particular court case from 1981 specifically said Declaratory relief is the "functional equivalent" of Injunctive relief. The plaintiff received Declaratory relief, not Injunctive relief in Ridenour vs Dearborn Board of Education. The Court of Appeals said, "No matter how it is viewed, plaintiff received the relief sought."

As a result, this particular court case from 1981 also set a legal precedent making it clear that attorney fees and legal costs can be recovered when relief is granted for any type of "relief," including both "Declaratory" relief and "Injunctive" relief.

But in 2014, over three decades of successful enforcement of the Open Meetings Act were destroyed when the Supreme Court ruled in a case called Speicher vs Columbia Township. In this Supreme Court case, the majority of judges set some new precedents that made the Open Meetings Act virtually useless in the state of Michigan.

For example, the Supreme Court decided the only way a person could recover attorney fees and legal costs if their rights were violated was if "Injunctive" relief was granted. What was even worse was the way the Supreme Court essentially rewrote the Open Meetings Act by saying Injunctive relief could only be obtained for "ongoing" violations of the law.

This Supreme Court ruling literally meant no person could ever obtain victory in court the first time a case is brought to court, because only a plural number of violations can produce "ongoing" violations. This also meant no person could ever hope to recover attorney fees and legal costs the first time a case is brought to court, even if the person successfully proves the Open Meetings Act has been violated.

Supreme Court Judge Michael F. Cavanagh wrote a letter of dissent to the other Supreme Court Judges and explained how this decision would set a legal precedent making it so every public body in the state now gets "at least one free pass" to violate the Open Meetings Act. The point is also made that many lawsuits will not be brought when violations occur, because people will have no hope of recovering their attorney fees and legal costs.

Supreme Court Judge Michael F. Cavanagh specifically says in his letter of dissent:
"Consequently, the majority opinion effectively gives a public body at least one free pass at violating the OMA because, without more, the public body's violation of the OMA, no matter how substantial, is presumably not "ongoing." I do not believe that the majority's apparent interpretation is what the Legislature intended when it adopted legislation aimed at promoting a "new era" of governmental accountability and public access to governmental decision-making."

I can tell you from personal experience, Supreme Court Judge Michael F. Cavanagh is 100% correct. The only reason I was able to team up with two other people to bring several violations of the Open Meetings Act to Circuit Court is because we had a very realistic hope of recovering our attorney fees and legal costs when we achieved Declaratory relief.

But the way things are now, and the way things have been since the ruling of the Supreme Court set new legal precedents in 2014, the Open Meetings Act is virtually powerless to stop violations of the law from occurring. I, and the two other citizens who went to Circuit Court with me in 2013, would no longer be able to hire an attorney to take those violations of the law to Circuit Court. Multiple attorneys confirmed it is very unlikely any judge will grant Injunctive relief against a fellow elected official – even when "ongoing" violations have been proven.

Cottrellville Township has a history of violations of the Open Meetings Act. For example, during the regular Board meeting of January 2012, I was told I had three minutes to speak at the podium during Public Comments. The Cottrellville Township Public Participation Policy confirmed this. This standard to allow people to speak for three minutes was a "recorded and established rule." As a result, if a person is not allowed to speak for three full minutes, it is a violation of the Cottrellville Township Public Participation Policy and, by extension, is a violation of MCL 15.263(5) in the Open Meetings Act.

After I talked for about two minutes, Cottrellville Township Supervisor Tom Raymond told me my three minutes were up. This was obviously false. Supervisor Tom Raymond simply didn't

like the way I was criticizing the lack of ordinance enforcement in the township. I spent $45 to purchase the official audio recording cassette from Cottrellville Township. This recording confirmed my time was illegally cut short at about two minutes.

Five months later, during Public Comments of the June 2012 regular Board meeting, Supervisor Tom Raymond once again claimed my three minutes of allotted time had expired while I was speaking at the podium. In reality, less than two minutes of time had passed. A video on YouTube titled "Intentional Open Meetings Act Violations – June 13, 2012" confirms this happened.

I was elected as a Cottrellville Township Trustee in November of 2012. In April of 2013, during a part of the Agenda called Board Comments, a similar violation occurred. During Board Comments, each board member is allotted three minutes to speak at the end of a meeting. While I was speaking during Board Comments, another Trustee interrupted and said, "Motion to adjourn." The Supervisor, Kelly Fiscelli-Lisco, gave a "Second" to that motion to adjourn. I was then outvoted 4-1. I said, "My rights were just violated" as the other board member left the room.

During the regular monthly Board meeting of May 2013, I decided to speak during Public Comments at the start of the meeting rather than Board Comments at the end of the meeting. I felt this was the only way I could be heard, because the other board members had previously proven they would simply adjourn the meeting if I spoke as a board member during Board Comments. I criticized the other board members for their corrupt bidding polices. Supervisor Kelly Fiscelli-Lisco then told me my time was up, even though only about two minutes had passed.

Afterwards, a citizen named Kyle Sunday went to the podium during Public Comments. Kyle criticized Supervisor Kelly Fiscelli-Lisco, because the supervisor was illegally living outside the township in violation of multiple statutory laws such as MCL 201.3(4), MCL 168.368, and MCL 168.492. Supervisor Kelly Fiscelli-Lisco illegally told Kyle Sunday if he did not stop speaking about that subject, he would need to sit down. Kyle changed the subject, and then proceeded to compliment me and support me for doing a good job as a Trustee. At this point, Supervisor Kelly Fiscelli-Lisco told Kyle Sunday his time was up. In reality, only about two minutes of time had passed.

After Kyle Sunday sat down, a citizen named Austin Adams came to the podium to speak during Public Comments. Austin Adams was told he needed to provide an Address in order to speak. Austin did not want to provide an Address, due to the fact that he had been physically threatened prior to the start of the meeting. I interrupted by saying, "Madam Supervisor, the Open Meetings Act does not require a person to provide an address in order to speak."

Supervisor Kelly Fiscelli-Lisco initially allowed Austin Adams to speak. However, after less than 90 seconds, Supervisor Kelly Fiscelli-Lisco interrupted Austin Adams by saying, "If you do not provide your Address, you will need to sit down." Austin Adams continued speaking, because he knew he had the legal right to do so. However, this caused Supervisor Kelly Fiscelli-Lisco to tell Austin that his time was up – even though only about 90 seconds had passed. Austin Adams politely said, "Thank you," and then sat down.

I want to make it clear there was no doubt the Supervisors of Cottrellville knew the time had not actually expired. The Deputy Supervisor was keeping track of the allotted time. During the meeting of May 2013, one woman even spoke for longer than three minutes. This woman criticized me as a Trustee for over three minutes. As a board member, I silently listened to what this woman had to say in a professional way. The Supervisor had no problem allowing this friend of hers to speak for over three minutes. However, when people criticized the other board members or complimented me on the job I was doing, they were not allowed to speak. You can see this in a video on YouTube titled "May 8, 2013 – Cottrellville Board meeting."

Also, Kyle Sunday was the only person who was told he could not speak about a certain subject. And Austin Adams was the only person who was told he needed to provide an Address in order to speak. Other people were not asked for an Address. And other people did not provide an Address. As a result, I talked with Austin Adams and Kyle Sunday after the board meeting. We decided to hire an attorney and take these violations to Circuit Court in order to stop violations like that from occurring in the future.

In November of 2013, the Circuit Court Judge ruled in our favor. A total of five violations were confirmed by the Circuit Court Judge in November of 2013. Three different types of violations of the Open Meetings Act occurred. The Circuit Court Judge later confirmed that all of those violations occurred with "specific intent" to do so.

The first violation of the Open Meetings Act was "Time." Three violations of "Time" occurred. Each of us were told we had three minutes to speak. The Circuit Court Judge confirmed each of us were intentionally denied those three minutes of public speaking time at the podium during Public Comments.

The second violation of the Open Meetings Act was "Content." Kyle Sunday was illegally told he could not speak about certain subjects. The Circuit Court Judge said there was no doubt Kyle Sunday and everyone else can speak about whatever they want for three full minutes while speaking during Public Comments.

The third violation of the Open Meetings Act was "Address." There is no requirement for a person to provide an Address in order to publicly speak at a regular monthly Board meeting. The Circuit Court Judge confirmed the Open Meetings Act was violated.

As expected, Declaratory relief was granted to us for these violations of the Open Meetings Act. The Circuit Court Judge allowed us to recover our attorney fees and legal costs as a result of the Declaratory relief granted.

As a result of this legal victory, these types of violations of the Open Meetings Act stopped in Cottrellville Township. This was an impressive achievement, because these types of violations had been ongoing in Cottrellville for many years and stretched across multiple board members in different election terms.

However, I want to reinforce something very important and very simple to understand. Despite the fact that I, Austin Adams, and Kyle Sunday had confirmed "multiple" forms of "ongoing"

violations of the Open Meetings Act over a period of years and confirmed "multiple" forms of "ongoing" violations of the Open Meetings Act during a single meeting, we were still not granted formal "Injunctive" relief.

We were not surprised that we were not granted Injunctive relief. Our attorney, Philip L. Ellison, specializes in the Open Meetings Act and Freedom of Information Act. Philip L. Ellison said all along that Injunctive relief is virtually never granted, because elected officials such as Judges do not grant Injunctive relief against fellow elected officials – not even elected officials found in violation of the Open Meetings Act. We received the Declaratory relief we expected to receive. The Declaratory relief granted had the "functional equivalent" of the Injunctive relief sought.

If these events from 2013 happened after the ruling of the Supreme Court in 2014, we would not be able to recover our attorney fees. We would not have a realistic hope of obtaining Injunctive relief, even though there was no doubt that "ongoing" violations of the Open Meetings Act were occurring. Due to the Supreme Court ruling in 2014, Declaratory relief is no longer viewed as the "functional equivalent" of Injunctive relief. As a result, we never would have attempted to take the case to court. This means the violations of the Open Meetings Act would still be taking place in Cottrellville Township as Board members act like bullies while violating the rights of people.

If I, Kyle Sunday, and Austin Adams would have taken the case to court now, we would be granted Declaratory relief by confirming the violations occurred. But the people who violated the law would still be violating the law. The people who violated the law would be laughing at me, laughing at Kyle Sunday, and laughing at Austin Adams.

The reason we would be laughed at is because the courts would be forced to say we could not recover our attorney fees and legal costs. The only thing that would have been achieved by this court case is that the people being bullied would be stuck with very large financial bills for attorney fees and legal costs, even though we successfully proved the Open Meetings Act was intentionally being violated by a pubic body. Obviously, it is unfair for us to be stuck with financial bills like that when we are the ones whose rights were being violated.

Another thing that is incredibly unfair since 2014 is the fact that the first person to take a case to court is stuck paying attorney fees and legal costs, but the second person who takes a case to court would be able to recover attorney fees and legal costs.

According to the Supreme Court ruling of 2014, attorney fees and legal costs can be recovered for "ongoing" violations. This means a case would need to be brought to court at least two times for the same violation before attorney fees and legal costs could be recovered. Obviously, this is incredibly unfair. Simply put, it is not fair for the first person to get stuck paying for attorney fees and legal costs while the second person is allowed to recover attorney fees and legal costs.

Another factor is that multiple attorneys, multiple State Representatives, and multiple Senators have said that although it is "possible" for violations to be classified as "ongoing" in a way that would allow "Injunctive" relief to be granted after as few as "two" violations have occurred, the courts will rarely grant Injunctive relief with only two ongoing violations.

This was proven and verified to me, Austin Adams, and Kyle Sunday when we confirmed ongoing violations had been occurring for years in Cottrellville Township. Despite the fact that we successfully confirmed ongoing violations had been occurring for years, "Injunctive" relief was still not granted by the courts.

We successfully proved a plural number of long-term "ongoing" violations over a period of multiple years, multiple elected officials, and over multiple election terms. We also successfully proved a plural number of short-term "ongoing" violations of multiple rules against multiple people during the Board meeting of May 8, 2013. Yet, we did not receive Injunctive relief.

Instead, we received Declaratory relief – which for three decades prior to 2014 was seen as the "functional equivalent" of Injunctive relief in a way that allowed attorney fees and legal costs to be recovered. Simply put, if we did not receive the Injunctive relief sought, it is not realistic for anyone to expect to receive the "Injunctive" relief sought.

The problems that now exist were caused by the Supreme Court's misinterpretation of the Open Meetings Act in 2014. In Section 11 of the Open Meetings Act, there are four times when the word "relief" is used. Of the four times when the word "relief" is used, there are three times when the word "injunctive" appears as a specific adjective prior to the word "relief."

The one time the word "relief" appears on its own without a specific adjective is the fourth and final time the word "relief" is used. In this fourth and final instance, the Open Meetings Act says attorney fees and legal costs can be recovered when "relief" is obtained.

In 1981, the Court of Appeals set a precedent for Section 11 MCL 15.271(4) that when a person succeeds in obtaining "relief" of any kind, the prevailing person was allowed to recover attorney fees and legal costs. The Court of Appeals published ruling from 1981 specifically said "declaratory relief" was the "functional equivalent" of the "injunctive relief" being sought. For over three decades, people who successfully proved the Open Meetings Act had been violated were allowed to recover attorney fees and legal costs when Declaratory relief was obtained.

Supreme Court Judge Michael F. Cavanagh brought up an important point in his letter of dissent in 2014. Cavanagh pointed out the fact that none of the Legislatures from 1981 to 2014 had a problem with the courts enforcing the Open Meetings Act in this way. This was proven because Section 11 MCL 15.271(4) of the Open Meetings Act was not amended by elected Legislatures from 1981 to 2014. If the Court of Appeals ruling from 1981 was different than what Legislatures intended, the Legislatures obviously would have made an amendment to the Open Meetings Act to explain things more clearly to courts in order to avoid confusion in the future.

In comparison, people across the state were closely watching the lawsuit of Speicher vs Columbia Township throughout 2014 because of its potential to set a new precedent that changed the enforcement of the Open Meetings Act with Section 11 MCL 15.271(4). When this Supreme Court ruling was published, and the new precedent was set, elected officials immediately saw the problems and recognized the need to amend Section 11 of the Open Meetings Act.

The first paragraph of the letter of dissent from Supreme Court Judge Michael F. Cavanagh says:

"Shortly after the enactment of the Open Meetings Act (OMA), MCL 15.261 et seq., the Court of Appeals effectively held that declaratory relief granted in lieu of or as the functional equivalent of an injunction supports an award of costs and actual attorney fees under MCL 15.271(4). See Ridenour v Dearborn Bd of Ed, 111 Mich App 798; 314 NW2d 760 (1981). Over the past 33 years, the Court of Appeals has reiterated that holding in numerous published opinions, solidifying the role of declaratory relief as it relates to costs and attorney fees under MCL 15.271(4). Despite this long line of precedent, at no time has the Legislature taken steps to amend MCL 15.271(4) in response. Because I believe that these cases properly interpreted and effectuated the Legislature's intent, I respectfully dissent."

The last paragraph of the letter of dissent from Supreme Court Judge Michael F. Cavanagh says:

"In light of the language, history, and purpose of the act, I cannot agree with the majority's decision to cast aside 33 years of precedent and erroneously write into the OMA a requirement that the Legislature did not intend—i.e., that a party must obtain formal injunctive relief as a prerequisite to an award of costs and attorney fees under MCL 15.271(4). Because I believe that more than three decades of precedent properly interpreted and effectuated the Legislature's intent, I respectfully dissent."

Shortly after the Supreme Court ruling of Speicher vs Columbia Township occurred in 2014, my attorney told me he was now forced to reject lawsuits he previously would have taken to court for violations of the Open Meetings Act. The reason for this is because there was now no hope of recovering the attorney fees and legal costs if the plaintiff was victorious and recovered Declaratory relief. Now, attorney fees can only be recovered if "formal" Injunctive relief is obtained.

I said to my attorney, "There must be something we can do to correct this problem. Isn't there anything we can do?" Attorney Philip L. Ellison responded by saying, "We would need to introduce a new bill that explained Section 11 more clearly in a way that specifically says attorney fees and legal costs can be recovered from any form of relief, including Declaratory relief."

I then talked to several State Representatives, several Senators, and several other elected officials. All of these current and former elected officials agreed the Open Meetings Act needed to be corrected so attorney fees and legal costs could once again be recovered by a prevailing party that proved the Open Meetings Act had been violated. Everyone agreed with Supreme Court Judge Michael F. Cavanagh that it was simply not acceptable for every public body in the entire state to get "at least one free pass" to violate the law.

Attorney Philip L. Ellison then volunteered to write Section 11 MCL 15.271(4) of the Open Meetings Act in a way that was much more specific and much more clearly written. No person in the state of Michigan knows the Open Meetings Act better than attorney Philip L. Ellison of Outside Legal Counsel.

The document written by attorney Philip L. Ellison was shown to State Representatives. Each State Representative who took the time to read this document was very pleased. Every Republican, every Democrat, and every Independent who saw the improvements and corrections made to Section 11 of the Open Meetings Act were pleased with what they saw. As a result, these changes and improvements were introduced as House Bill 5778 (2016) by State Representative Martin Howrylak and supported by Jeff Irwin, Rose Mary Robinson, Aaron Miller, and Dan Lauwers.

It was a pleasure seeing Republicans, Democrats, and an Independent come together in agreement because of the mutual understanding that the Open Meetings Act needed to be corrected and improved with House Bill 5778 (2016). Unfortunately, there was simply not enough time to pass House Bill 5778 (2016).

As a result, State Representative Martin Howrylak made it a top priority to pass this House Bill early in 2017 as House Bill 4766 (2017). Once again, we saw elected representatives from both the Republican Party and Democrat Party come together in agreement to support House Bill 4766 (2017), because of the mutual understanding that the Open Meetings Act needed to be corrected and improved as soon as possible. This time an even larger number of elected representatives supported House Bill 4766 (2017) and helped introduce it as co-sponsors.

The Open Meetings Act is very important. The Open Meetings Act is what provides instructions to elected officials and boards across the state. The Open Meetings Act is what provides people with the opportunity to hire an attorney and seek legal action when the law is being violated. But without a hope of recovering attorney fees and legal costs, the Open Meetings Act is virtually useless to people. As a result, elected officials and boards across the state are free to violate the law and commit actions of bullying.

The Supreme Court ruling of Speicher vs Columbia Township in 2014 made it so every elected official and every board in the state now knows they have "at least one free pass" to violate the law. And as I have explained, ongoing violations can go on for years and the courts will still not grant Injunctive relief. This is why it is crucial for people to be able to recover attorney fees and legal costs when relief of any kind is obtained, including Declaratory relief and settlements.

Allowing people to recover attorney fees and legal costs when relief is obtained is fair. People will once again be able to take cases to court when the Open Meetings Act has been violated. Taking cases to court when the Open Meetings Act has been violated is the obvious intent of the Legislatures who introduced the Open Meetings Act. But without the ability to recover attorney fees and legal costs, the Open Meetings Act has no power to hold elected officials accountable when they violate the law.

For example, without the realistic hope of recovering attorney fees and legal costs, I would not have been able to take my case to court. Kyle Sunday also would not have been able to take his case to court. And Austin Adams would not have been able to take his case to court. If those same exact events happened now, there would not have been a court case and the illegal actions we faced would still be taking place.

Thankfully, elected officials representing the people recognize the need to correct the problems created in 2014 in the Supreme Court ruling of Speicher vs Columbia Township. Thankfully, elected officials representing the people recognize the Open Meetings Act was successfully enforced for over three decades prior to the Supreme Court ruling in 2014. Thankfully, elected officials representing the people recognize the need to write Section 11 MCL 15.271(4) again in a way that is more clearly explained in order to help the courts enforce Section 11 appropriately.

Thank you very much for taking the time to read this. And thank you very much for your support of House Bill 4766 (2017).

Sincerely,

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